

EXHIBIT C



Your Face Is Not Your Own

When a secretive start-up scraped the internet to build a facial-recognition tool, it tested a legal and ethical limit — and blew the future of privacy in America wide open.

By Kashmir Hill
Art by Zach Lieberman

In May 2019, an agent at the Department of Homeland Security received a trove of unsettling images. Found by Yahoo in a Syrian user's account, the photos seemed to document the sexual abuse of a young girl. One showed a man with his head reclined on a pillow, gazing directly at the camera. The man appeared to be white, with brown hair and a goatee, but it was hard to really make him out; the photo was grainy, the angle a bit oblique. The agent sent the man's face to child-crime investigators around the country in the hope that someone might recognize him.

When an investigator in New York saw the request, she ran the face through an unusual new facial-recognition app she had just started using, called Clearview AI. The team behind it had scraped the public web — social media, employment sites, YouTube, Venmo — to create a database with three billion images of people, along with links to the webpages from which the photos had come. This dwarfed the databases of other such products for law enforcement, which drew only

happened in those early years, declining to name others involved beyond Schwartz. In Ton-That's telling, the company just kind of stumbled into facial recognition.

That story never satisfied me. Clearview is a radical new entrant to the technological scene. It dared to contravene a taboo that Google and Facebook — not generally known for their privacy-respecting ways — saw as exceedingly unwise to cross. For the last year, I have tried to figure out the exact genesis of that iconoclastic development and learned that the company's origin story is more complex than Ton-That made it out to be.

ADVERTISEMENT

After I broke the news about Clearview AI, BuzzFeed and The Huffington Post reported that Ton-That and his company had ties to the far right and to a notorious conservative provocateur named Charles Johnson. I heard the same about Johnson from multiple sources. So I emailed him. At first, he was hesitant to talk to me, insisting he would do so only off the record, because he was still frustrated about the last time he talked to a New York Times journalist, when the media columnist David Carr profiled him in 2014.

Back then, Johnson was a 26-year-old blogger who would try to poke holes in big stories that were popular with progressives. When a police officer killed 18-year-old Michael Brown in Ferguson, Mo., Johnson sued unsuccessfully to obtain Brown's juvenile records and published photos from Brown's Instagram account that he claimed showed a violent streak. Later, Rolling Stone wrote about a University of Virginia student named Jackie who claimed that she was gang-raped at a fraternity, and Johnson called the story a hoax; after the magazine acknowledged discrepancies in Jackie's story, Johnson posted what he said was her last name, along with photos of her. Rolling Stone later retracted the story altogether. Carr criticized Johnson's attack-dog tactics and noted factual errors, calling Johnson a "troll on steroids," but pointed out that he had gotten some notable scoops and was "not without some talent."

Johnson found his tactics and political leanings suddenly becoming more mainstream during the Trump administration, and he began to accumulate real influence. Forbes reported that he helped the White House vet political appointees.

Johnson says he eventually decided to talk to me on the record because he regrets some of his decisions and the notoriety that has haunted him since. He wanted to correct what he feels are mistaken impressions of him by revealing that he helped start a company whose product is now being used to save children from sexual abuse.

Johnson claims that he met Ton-That in 2016, introduced him to Schwartz and considers himself a third co-founder of Clearview. I was skeptical at first, given Johnson's reputation as a peddler of disinformation. In a statement, Ton-That acknowledged that he met Johnson in 2016 and that Johnson had "introduced people to the company." But he said Johnson was not a founder and never had an operational role.

Johnson, however, provided email and legal documents that, along with other sources, strongly support his claims; indeed, the company might not exist without his contributions.

According to Johnson's version of events, which Clearview disputes, it all began in May 2016, when Ton-That emailed Johnson, saying he was an admirer of Johnson's work and asking to join a Slack group that he ran for fans of his right-wing takes. The next month, Johnson visited New York, and Ton-That met him for the first time in person. They hung out for at least 10 hours straight and became fast friends, according to Johnson and associates of Ton-That at the time. The people who knew Ton-That said he had always been contrarian, but it surprised them when he came out as a Trump supporter in early 2016. They worried about his new relationship with Johnson, given his extreme views and associations. Ton-That recently described himself as "confused" at that time in his life. He went on: "People get radicalized into things. It's crazy to see it. I got sucked in for a while."

That summer, the new friends attended the Republican National Convention in Cleveland, where Donald Trump was being crowned the party's presidential nominee. Johnson had

rented a big group house on Airbnb. “Am I still allowed to crash?” Ton-That wrote in an email to Johnson, which Johnson provided to me. “I’ll bring my guitar, can chip in for accommodations.”

“Yes, of course,” Johnson replied. “Want to meet Thiel?”

“Of course!” Ton-That wrote back.

“Thiel,” of course, was Peter Thiel, one of the most powerful men in Silicon Valley — though he no longer lives there, having moved to Los Angeles. (A spokesman for Thiel did not respond to requests for comment.) He famously turned an early \$500,000 investment in Facebook into a billion dollars and became a founder of Palantir, a data-gathering juggernaut.

ADVERTISEMENT

Thiel was in Cleveland because he had come out in support of Trump and was giving a prime-time speech at the convention. Johnson sent me a photo taken of him and Ton-That on the floor of the arena: Both men are smiling, with Thiel visible on a screen behind them.

While Johnson and Ton-That hung out at the rental house, they mused about discredited sciences that could be explored in the modern age with new technologies. At one point, the conversation turned to physiognomy, the pseudoscientific judgment of a person's character based on their facial features. "Hoan played music," Johnson said. "We all drank a lot." He added, "That was where a lot of ideas that became Smartcheckr, and then Clearview, began." Johnson told me he also arranged a meeting between Thiel and Ton-That at a home in Shaker Heights that week.

Johnson says he was the one who brought in Schwartz, because of Schwartz's deep political connections in New York — including at the N.Y.P.D. — and because he offered an inroad to Trump as a former Giuliani lieutenant. Two days after the convention ended, Johnson emailed Ton-That and Schwartz, introducing them. Within a week, they made plans to meet, according to an email thread that Johnson forwarded to me.

Seven months later, in February 2017, Schwartz emailed draft formation documents for a company called Smartcheckr LLC to Johnson, which granted equal ownership to Schwartz, Ton-That and Johnson. It was a name that would seem to have Johnson's fingerprints all over it — he previously founded start-ups called WeSearchr and FreeStartr — though the company claims the name was Schwartz's idea. "I am very excited about our new company and look forward to the great work you, Hoan and I will be doing together!" Schwartz wrote.

Ton-That says the LLC “was not intended for the purpose of developing facial-recognition technology, and it conducted no business.” Johnson claims the plan from the beginning was to make an app to identify faces. In June 2017, Ton-That emailed Schwartz, Johnson and another person a link to a Scientific American article about Caltech researchers who had shed new light on how the brain identifies faces. Schwartz responded, “Sounds like Caltech is a year behind you.”

In July 2017, a director at Thiel Capital, an investment firm founded by Thiel, emailed Ton-That to say that Thiel was interested in investing \$200,000. Ton-That forwarded the email to Johnson. Thiel soon did invest.

Johnson was living on the West Coast, dealing with a new child and a disintegrating marriage, and while he was introducing the company to potential funders and clients, he was not involved in day-to-day operations. In August 2017, Smartcheckr registered as a corporation in Delaware. This time, Schwartz and Ton-That were listed as the only directors.

That fall, perhaps trying to keep some money coming in while improving its facial-recognition technology, Smartcheckr pitched itself to political candidates as a consulting firm. A person close to the company in its early days said the founders wanted to dig up dirt on liberals, which the company and Johnson deny. Paul Nehlen, a far-right Republican running for Congress in Wisconsin, publicly claimed the company had sent him a brochure about “enriched” voter profiles, “microtargeting” of voters and

“extreme opposition research.” (Nehlen didn’t respond to requests for comment.) When I asked the company about his claims last year, it told me it never actually offered such services and that the email came from a rogue contractor. But I found out that it was not a one-off — nor was the outreach limited to Republicans.

Schwartz offered the same Smartcheckr services, in October 2017, to a Democratic newcomer to politics named Holly Lynch, a communications consultant who was running for a congressional seat in New York. According to Lynch, he told her he had a great guy who could be very helpful with voter data, called the Prince — a reference to Ton-That’s royal ancestry. Lynch said Schwartz didn’t mention facial recognition, only “unconventional databases.” Lynch ultimately chose not to work with Smartcheckr and soon ended her campaign.

ADVERTISEMENT

It appears Smartcheckr decided against pursuing political consulting. The facial recognition it had been working on had improved. “It wasn’t clear it would work until April 2018, when the accuracy part really kicked in,” Ton-That said.

Two months later, the company changed its name to Clearview AI. That summer, it pitched itself as a security start-up and conducted pilot facial-recognition projects with branches of TD Bank and Gristedes Supermarket in Manhattan, according to a document provided to a potential investor. (Gristedes's owner, John Catsimatidis, confirmed its project; TD Bank said it "does not have a business relationship with Clearview AI and does not use any of Clearview AI's products.") Another investor who was approached by the company said that the product was impressive but that the ties to Charles Johnson scared him off. (He did not want to be named, fearing retribution from Johnson.)

During the course of 2018, Clearview's database grew to a billion faces from 20 million. At the end of the year, the founders dissolved the LLC they formed in New York and asked Johnson to sign a "wind-down and transfer agreement," which converted his one-third ownership in Smartcheckr LLC into a 10 percent stake in Clearview AI. The contract also entitled him to a 10 percent sales commission on any customers he introduced to the company, though Johnson hasn't been paid a commission.

The wind-down agreement, which Johnson provided to me, requires him not to "publicly disclose the existence of this agreement, his indirect ownership of the shares or his prior provision of services to the company." It is signed by Johnson, Ton-That and Schwartz. (In early March, Clearview amended its incorporation documents such that any shareholder who "breaches any confidentiality obligations"

can have his or her shares bought back at 20 percent of market value. When I told Johnson about this, he responded, “That’s probably not good for me.”)

Johnson said in February that he was willing to break the agreement, both because he’s upset about having been erased from Clearview’s past and because he thinks the company should have gone further than it has in making the technology available. Johnson believes that giving this superpower only to the police is frightening — that it should be offered to anyone who would use it for good. In his mind, a world without strangers would be a friendlier, nicer world, because all people would be accountable for their actions.

“I think Clearview should be in the hands of the moms of America,” he said.